

BEFORE THE
SURFACE BOARD OF TRANSPORTATION

215341

Finance Docket No. 34797

COMMENTS OF THE MERCER COUNTY IMPROVEMENT AUTHORITY
ON THE PETITION OF
NEW ENGLAND TRANSRAIL, LLC, d/b/a WILLMINGTON AND WOBURN
TERMINAL RAILWAY
FOR EXEMPTION FROM 49 U.S.C. § 10901

The Mercer County Improvement Authority ("MCIA") submits the following comments to the Surface Transportation Board ("STB") concerning the Petition of New England Transrail, LLC ("NET") for exemption from 49 U.S.C. § 10901. More specifically, NET asserts that its transloading operations, which include shredding of construction and demolition debris ("C&D") and baling of municipal solid waste ("MSW"), constitute "transportation by rail carriers" pursuant to the ICC Termination Act of 1995 ("ICCTA") and, therefore, the STB has exclusive jurisdiction over such operations. (Petition pg. 18). Stated differently, NET argues that its waste transloading services are an integral part of its interstate operations; as such, state and local regulations applicable to NET concerning these services are federally preempted. (Petition pg. 20).

MCIA is a County Improvement Authority organized pursuant to N.J.S.A. 40:37A-46 et seq., as a public body corporate and politic of the State of New Jersey. MCIA has a specific and significant interest regarding the issue of federal preemption of certain rail carrier operations, particularly those operations relating to solid waste transfer stations, because MCIA is the agency responsible for implementing, administering, and overseeing the Mercer County District Solid Waste Management Plan within Mercer County, New Jersey. Through the Mercer County District Solid Waste Management Plan, MCIA ensures that designated transfer stations and/or disposal facilities are used for solid waste originating from specific locations within Mercer County. MCIA was charged with this responsibility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., which is the comprehensive statutory framework for the management and coordination of all solid waste collection, disposal and utilization activities in New Jersey.

Given the comprehensive regulatory framework for solid waste in New Jersey, MCIA questions NET's assertion that the STB's exclusive jurisdiction encompasses solid waste transfer operations occurring at railway facilities if those operations include the processing, shredding, sorting, crushing, storage and/or similar treatment of solid waste. Without proper handling and oversight, such operations threaten the public health, safety and welfare and pose environmental hazards. In fact, when the New Jersey Legislature enacted the Solid Waste Management Act it recognized, in relevant part, that:

the collection, disposal and utilization of solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection and disposal service or efficient utilization of such waste; that the management of solid waste consists largely of piecemeal, uncoordinated activities developed to meet the immediate needs of local governments with little, if any, regard for regional planning and coordination; that local units of government acting on their own, despite the most dedicated and sincere efforts, lack the financial resources, scope of alternatives and expertise to plan, develop and implement efficient and effective solutions to their solid waste problems[.]

[N.J.S.A. 13:1E-2a.]

Preempting state and local regulation of transfer station operations simply because these operations occur next to rail lines cannot be what Congress intended. To the contrary, the ICCCTA rail transportation policy mandates that operation of transportation facilities and equipment occur "without detriment to the public health and safety." 49 U.S.C. § 10101(8). Vesting the STB with exclusive jurisdiction over such operations will result in a return to the piecemeal, uncoordinated system of regulation

that pre-dated enactment of the Solid Waste Management Act. MCIA must retain its police power jurisdiction over transfer station operations like those proposed by NET.

Solid waste facilities, which includes any site or building used for "storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste," N.J.A.C. 7:26-1.4, are regulated in New Jersey under the Solid Waste Management Act. A "transfer station" is a solid waste facility where solid waste is transferred from one solid waste vehicle to another solid waste vehicle, including a rail car, for transportation to an off-site solid waste facility." Ibid. To construct or operate a transfer station in New Jersey, a Solid Waste Facility Permit is necessary. To receive this permit, an applicant must, among other things, be accepted into the applicable County District Solid Waste Management Plan. Thus, the permit serves as the necessary approval for State and local authorities, like MCIA, to ensure that transfer stations operate safely, efficiently and effectively. Without a permit, rail transfer stations could construct and operate a solid waste facility on their own terms, resulting in the transfer station operator trading public health, safety and welfare for economic savings.

Indeed, late this summer, the United States Senators from New Jersey introduced bill S.1607 (and the House companion bill H.R. 3577) to address, as Senator Lautenberg stated, the "serious problem in New Jersey and across the nation – the unregulated sorting and processing of garbage at rail facilities in our communities." Senator Lautenberg further noted that the bill, the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005, would alleviate the "unintended consequences" of broad-reaching Federal preemption that "forbids environmental

regulatory agencies from overseeing the safe handling of trash or solid waste" at transfer stations.

Senator Lautenberg recognized the "recent proliferation of solid waste rail transfer facilities," which have "affected the ability of State and local governments to engage in long-term waste management planning." Finally, while observing that the ICCTA "is necessary for the efficient operation of commerce in our modern economy," Senator Lautenberg balanced this need against transfer station activities, which "require the greatest environmental oversight, because they pose the greatest environmental risk."

MCIA merely desires a level playing field for transfer station facilities. MCIA is not asking that rail carriers or rail facilities be prohibited from hauling solid waste. Entities like NET, however, stand to substantially profit from their solid waste operations; NET represents that 50% of the commodities it ships will be C&D and MSW, generating \$2.5 million in annual revenues. (Jones Verified Statement). With that profit, rail transfer station operators must be subject to environmental regulation so that the public's health and safety is not forgotten amidst the drive to increase revenues.

Moreover, traditional transfer stations have complied with the permitting procedures in New Jersey. It is inequitable to have permitting procedures for certain transfers stations and allow rail transfer stations to operate immune from state environmental oversight. Requiring certain transfer stations to obtain a permit while exempting railway transfer stations from permitting grants an unfair economic advantage to railway transfer stations and will lead to an end run around environmental

regulation, which will potentially harm the public due to unregulated handling of solid waste.

An applicant for a Solid Waste Facility Permit must submit a comprehensive permit application, including an air quality report, engineering designs, and undergo technical review to ensure that the proposed facility operates to protect the environment and public health. The permit review process may result in additional requirements for the transfer station so as to reduce environmental impacts and threats to the public health. After a permit is issued, the transfer station must continue to meet the operational requirements and is subject to regular inspection by State and/or local authorities. If a transfer station operator is not held to these local procedures, the public will have no outlet to address problems and the environmental safeguards that are put in place during the permitting process will be absent.

NET asserts that it will comply with all applicable state substantive health and safety regulations for the construction and operation of its facility. (Petition pg. 22). This is a nice sentiment, however, the permitting process has long been the most efficient manner for state and local authorities to address handling of solid waste. Preempting railway transfer stations, and similar solid waste rail activities, from State and local regulation will result in a return to the haphazard enforcement and unequal treatment of solid waste operators that existed in New Jersey before enactment of the Solid Waste Management Act. STB has the opportunity to remain proactive to ensure sound environmental policy is applied to railway transfer stations rather than dealing with environmental damage or public health issues after they occur.

As noted above, MCIA is gravely concerned about the potential public health, safety and welfare and environmental issues resulting from operation of unpermitted railway transfer stations, which are deemed exempt from State and local regulatory oversight. MCIA feels that allowing railway transfer stations, which process, handle, shred, and store waste, to claim federal preemption from State and local oversight creates an uneven playing field amongst transfer stations and increases the potential for serious public health, safety and welfare concerns throughout the State of New Jersey. As Senator Lautenberg aptly concluded, "I realize that the Surface Transportation Board must have broad jurisdiction over rail transportation, but that jurisdiction should not be interpreted in a way that puts our environment at risk." Accordingly, MCIA urges the STB to deny NET's petition for exemption from 49 U.S.C. § 10901.

Other Submissions

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